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CHARLES ELMOR

IN THE

Supreme Court of the United States.

October Term, 1929.

No. 351.

F. W. STEWART MANUFACTURING CORPORATION, *Petitioner*,

v.

THE UNITED STATES.

BRIEF IN SUPPORT OF A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

GEORGE M. WILMETH,
Attorney for Petitioner.

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OPINION OF THE COURT BELOW.

The opinion of the Court of Claims (R. 12–13) was announced on March 11, 1929, but has not yet been reported.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The petitioner corporation is engaged in the manufacture, sale and distribution of repair and replacement parts for speedometers used on automobiles.

Petitioner corporation does not manufacture complete speedometers, but only certain speedometer parts, intended for use in replacing parts of speedometers which have become worn or damaged.

The Treasury Department has held that certain of the speedometer parts manufactured by petitioner corporation are *not* "parts" or "accessories" for automobiles within the meaning of the taxing statutes, and has refunded the taxes illegally collected on sales of the same, but holds that other speedometer parts manufactured by petitioner corporation

(and which bear a similar relation to the automobile to those held nontaxable) are "parts" or "accessories" within the meaning of the taxing statutes.

Between the dates October 1, 1921, and October 31, 1925, petitioner corporation was required to pay to the Government on sales of such speedometer parts, taxes in the amount of $4,624.89. Claim for refund of this amount of tax so paid was duly filed by petitioner corporation, and rejected or disallowed by the Commissioner of Internal Revenue, whereupon suit for recovery of these taxes was filed in the United States Court of Claims.

Subdivision (3) of Section 900 of the Revenue Act of 1918 (40 Stats. 1122), subdivision (3) of Section 900 of the Revenue Act of 1921 (42 Stats. 227), and subdivision (3) of Section 600 of the Revenue Act of 1924 (43 Stats. 253), under alleged authority of which the taxes sought to be recovered were levied, assessed, collected and paid, imposed a tax on the manufacturers' sale of "parts *or* accessories for any of the articles *enumerated in subdivision (1) or* (2)" of such sections.

The articles enumerated in said subdivisions (1) and (2), as found by the Court of Claims in its decision in the case of *Martin Rocking Fifth Wheel Co.* v. *United States* (60 C. Cls. 466), are only (1) automobile trucks, (2) automobile wagons, (3) other automobiles, and (4) motor cycles. Speedometers are not enumerated in subdivision (1) or (2), but are "accessories," enumerated or included in subdivision (3) (see paragraph 2, Article 16, Treasury Department Regulations No. 47, Revised December, 1921), and it is the contention of petitioner corporation that since Sections 900 and 600 of the Revenue Acts of 1918, 1921 and 1924 imposed a tax on sales of parts for only the articles enumerated in subdivisions (1) and (2), and not on sales of parts for articles enumerated in subdivision (3) of those sections, the taxes so paid by it were collected without authority of law.

QUESTION TO BE DECIDED.

The case presents for determination by the Court the question of whether speedometer parts manufactured and sold

by petitioner corporation are "parts" for articles enumerated in subdivision (1) or (2), within the meaning of subdivision (3) of Sections 900 and 600 of the Revenue Acts of 1918, 1921 and 1924.

STATUTES AND DEPARTMENTAL REGULATIONS INVOLVED.

The provisions of Section 900 of the Revenue Act of 1918 (40 Stats. 1122), Section 900 of the Revenue Act of 1921 (42 Stats. 227), and Section 600 of the Revenue Act of 1924 (43 Stats. 253, 322), under alleged authority of which the taxes involved were levied, assessed, collected and paid; and the pertinent provisions of the Departmental Regulations (No. 47) relating thereto, are quoted at pages 4, 5, 6 and 7 of the record herein.

ASSIGNMENTS OF ERROR.

I.

The question decided by the Court of Claims is an important one involving interpretation of a Federal taxing statute which has not been, but should be, definitely settled by this Court, in justice to many manufacturers of parts for accessories on sales of whose products taxes have been levied without authority of law.

II.

The decision of the Court of Claims is contrary to the principle laid down by that Court in interpreting subdivision (3) of Section 900 of the Revenue Act of 1918 (40 Stats. 1122), the identical provision of law here involved, in the case of *Martin Rocking Fifth Wheel Co.* v. *United States*, 60 C. Cls. 406.

III.

The decision of the Court of Claims is inconsistent with the decision rendered by that Court, on February 4, 1929, in the case of the *Auburn Rubber Co.* v. *The United States* (No.

H–433), interpreting the same provision of the taxing statute here involved, in which decision it was held that patches and reliners for tires enumerated in subdivision (3) were not subject to the tax imposed under that subdivision.

IV.

The decision of the Court of Claims violates the rule laid down in the cases of *Gould* v. *Gould* (245 U. S. 151) and *United States* v. *Merriam* (263 U. S. 179), heretofore universally followed by the Federal Courts, in that it extends the application of subdivision (3) so as to bring within its scope articles or things which are not enumerated or included therein.

ARGUMENT.

The decision of the Court of Claims states:

> "The only question in this case is whether speedometer gears, drive chains, or flexible shafts, and flexible housings for such shafts, especially designed, manufactured, and sold for use on automobiles, and which were adapted for no other purpose or use, subjected plaintiff to liability for the payment of excise taxes under the provisions of Section 900 of the Revenue Act of 1921, 42 Stat. 291, and section 600 of the Revenue Act of 1924, 43 Stat. 322, which levy taxes on parts and accessories sold on or in connection with automobiles, automobile trucks, and automobile wagons."

It is respectfully submitted that the above is not an accurate statement of the question involved in the case, first, because the "parts" were not designed for use on *automobiles*, but for use on *automobile speedometers*, and second, because the taxes involved were not paid on such parts "*sold on or in connection with automobiles, automobile trucks, and automobile wagons*," but on separate sales of the various parts enumerated, for replacement of worn and broken parts of *automobile speedometers*.

It is obvious from the above quoted language used in stating the question involved, that the Court failed to understand

petitioner's contention as to why the products manufactured by it were not properly taxable under the statutes. It is true, as stated by the Court, in substance, that subdivisions (1) and (2) levied taxes on sales of complete automobile trucks, automobile wagons, other automobiles and motor cycles "(including tires, inner tubes, parts, and accessories therefor, sold thereon or in connection therewith or with the sale thereof)," but the taxes sought to be recovered were not levied under subdivision (1) or (2). The taxes involved were levied under alleged authority of subdivision (3). This subdivision imposed no tax on automobiles, trucks, or motor cycles, and neither did it impose a tax on parts or accessories *sold on or in connection with such vehicles*. The tax under subdivision (3) was on tires, inner tubes, parts, or accessories for the vehicles enumerated in subdivisions (1) and (2), when such tires, inner tubes, parts, or accessories were sold by the manufacturers thereof, "to any person other than a manufacturer or producer of any of the articles (vehicles) enumerated in subdivision (1) or (2)," separate and apart from the complete vehicles. The ground on which petitioner's claim is based is that subdivision (3) imposed no tax on "parts for articles enumerated in that subdivision, but only on "parts" for articles enumerated in subdivisions (1) and (2).

The Court further states in its decision:

> "* * * It is a matter of common knowledge that no automobile is now made and sold in this country without a speedometer, and that owing to the speed regulations which universally prevail it would be difficult to operate an automobile without this device. In fact an automobile would not be complete without a speedometer."

While it is true that all automobiles are now equipped with speedometers, and that they are installed as a permanent part of the equipment, they are not "parts" of the automobile, and are not manufactured by the automobile manufacturer. They are "accessories," made by a different company and sold by it to the automobile manufacturer. Treasury Department Regu-

lations No. 47, covering the operation of sections 900 and 600, reads, in part, as follows:

> "Art. 16. * * *
> The term 'accessories' includes, for example, * * * horns, *speedometers*, self starters, spot lights, shock absorbers, * * *."

An automobile may be operated just as efficiently without a speedometer, and the fact that an automobile manufacturer equips his car with a speedometer, and that it is undoubtedly a welcome convenience to the operator of the car, for registering speed and mileage, does not change the character of the speedometer from an "accessory" to a "part," any more than the fact that practically all automobiles are now sold by the manufacturers equipped with windshield wipers, bumpers, shock absorbers, stop light, parking light, jack, etc., changes the character of these "accessories" to "parts." As stated by the Court of Claims in the case of *Atwater Kent Mfg. Co.* v. *United States* (62 C. Cls. 419), "The question is not whether they were 'parts' of *something* after they were attached to the one or another kind of machine to which they were attached, and in which they could function, but whether they were *sold as parts of the articles mentioned in subdivisions (1) or (2)* of Section 900." (Italics supplied.)

The reference, in its decision, to the case of *Martin Rocking Fifth Wheel Co.* v. *United States* (60 C. Cls. 466), also indicates that the Court failed to comprehend petitioner's contention. In citing this decision, petitioner did not contend that there was any similarity between the products sold by it, and the product involved in the *Martin* case. In that decision, the Court, interpreting the same provision of the taxing statute here involved, stated:

> "'Parts,' as used in that paragraph, are 'parts' *for* [italics ours] the articles enumerated in paragraphs (1) and (2), which are 'automobile trucks,' 'automobile wagons,' 'other automobiles,' and 'motor cycles,' 'except tractors.'"

It is petitioner's contention that subdivision (3) imposed no tax on parts for articles enumerated in that subdivision, but only on parts for articles enumerated in subdivisions (1) and (2), which are the complete vehicles specified therein; and the language used by the Court in the Martin decision was cited in support of this contention, as showing that the Court had already adopted this interpretation, but it is apparent that the Court missed the application, and misunderstood the citation as a contention of similarity of character between the products involved in the two cases.

The sole question involved in the present case is whether subdivision (3) imposed a tax on sales of parts for articles enumerated in that subdivision.

In the cases of *Cole Storage Battery Co.* v. *United States*, 65 C. Cls. 164, and *Walker Mfg. Co.* v. *United States*, 65 C. Cls. 394, cited by the Court as controlling the present case, the question involved was not the taxability of parts for batteries or parts for jacks. As a matter of fact the Treasury Department had held that parts of storage batteries and parts of lifting jacks *were not subject to tax* under subdivision (3) as "parts for articles enumerated in subdivision (1) or (2)." (S. T. 367, C. B. 6–1922, p. 443.) The question presented for determination by the Court in these two cases was whether complete storage batteries and complete lifting jacks were "parts or accessories for automobiles," as distinguished from commercial commodities adaptable for general use, and the Court properly held that they were such "parts or accessories" within the meaning of the taxing Acts.

Subdivisions (1) and (2) of Section 900 of the Revenue Act of 1918 (and the corresponding provisions of the other Acts here involved) imposed certain taxes upon the manufacturers' selling price of complete automobile trucks, automobile wagons, other automobiles and motor cycles, and, realizing that *replacements* on automobiles became necessary from time to time, and that such *replacements* could properly bear a like burden, Congress imposed under subdivision (3) a tax on the manufacturers' selling price of "tires, inner tubes, *parts, or accessories for any of the articles enumerated in subdivision (1) or*

(3)." It is submitted that this definite mention of articles *enumerated in subdivision* (1) or (2) was intended for the purpose of levying a tax on the sale, *for replacement purposes*, of complete "tires," "inner tubes," "accessories" and "parts" for the articles enumerated in subdivisions (1) and (2), when such complete units enumerated in subdivision (3) were needed as replacements, and was not intended to tax parts or materials sold for use in repairing or reconditioning, and thus prolonging the life of, articles enumerated in subdivision (3). (*National Rubber Filler Co.* v. *United States*, 63 C. Cls. 337).

If Congress had desired to tax parts for articles enumerated in subdivision (3), it would have been a simple matter to definitely accomplish this purpose by inserting after the words "subdivision (1) or (2)," the words "or in this subdivision," but this was not done, and petitioner submits that the language used did not impose a tax upon parts for articles enumerated in subdivision (3).

The Treasury Department, as a general rule, has adopted this interpretation, as indicated by its ruling on plate glass. (O. D. 133, S. T. 621–257.) In this ruling it was held that "plate glass cut to size and shape for use in automobile windshields is not subject to tax unless sold mounted in new frames." This shows that the Bureau interpreted the law as intending not to tax the repair of an old, broken windshield, by the installation of new glass, but only the sale of a complete new windshield including the glass and frame. The same principle was laid down in the Departmental ruling on top recovering. S. T. 392, I–39–525 held that the recovering of old automobile top bows was not subject to tax, but that the sale of a complete new top, including top bows and bow sockets, was taxable. This interpretation of the statute was also followed in the ruling on radiators. A complete radiator, consisting of the core and upper and lower tanks, soldered together, was held taxable as a "part," but S. T. 448, III–19–1552 held that radiator cores and upper and lower tanks, sold separately, were not subject to the tax imposed by subdivision (3).

Among other articles which have been held nontaxable in accordance with this interpretation of the statute may be

mentioned the following: Parts of generators, parts of starters, parts of magnetos, cross chains for anti-skid chains, top decks, side quarters, back curtains, plate glass cut to size and shape for doors and windows, chains cut to length, retread bands for tires, reliners for tires, parts of distributors, spokes, felloes and hub flanges for wheels, etc. (See list of articles held non-taxable, pages 123–4, Record of Hearing before the Subcommittee of the House Committee on Appropriations on First Deficiency Appropriation Bill, 1927, 69th Congress, Second Session; also O. D. 100, S. T. 4–21–215; S. T. 394, C. B. December, 1922, p. 295, and Par. 2012–32, C. C. H. Tax Service, 1927.)

The question involved in the cases held by the Court of Claims to be controlling is entirely different from the one involved in the present case. Petitioner makes no contention that complete speedometers were not taxable under the provisions of subdivision (3) of Section 900 of the Revenue Acts of 1918 and 1921, and subdivision (3) of Section 600 of the Revenue Act of 1924.

SUBDIVISION (3) IMPOSED NO TAX UPON PARTS FOR ARTICLES ENUMERATED IN SUBDIVISION (3) BUT ONLY UPON PARTS FOR ARTICLES ENUMERATED IN SUBDIVISIONS (1) AND (2).

The sole question presented, then, is what are the articles enumerated in subdivisions (1) and (2)?

Consideration of the provisions of the statute, and the purpose of the language used, must necessarily lead to the conclusion that, for the purposes of subdivision (3), the only articles *enumerated* in said subdivisions (1) and (2) are the *complete vehicles* specified therein.

The first clause or paragraph of Section 900 provides for a tax on sales made by only the *manufacturer*, *producer* or *importer*. Subdivision (1) specifies the rate of tax to be paid by such manufacturers, producers and importers, on sales of complete automobile trucks and automobile wagons. Subdivision (2) specifies the rate of tax to be paid on sales of all

other complete automobiles and motor cycles. These taxes were payable only on sales made by the manufacturer, producer or importer, and no tax was imposed on the resale by the distributor or dealer.

After providing for a tax on the sale of the complete vehicles enumerated in subdivisions (1) and (2), Congress further provided, in subdivision (3), for a tax on tires, inner tubes, replacement parts and accessories, when sold by the manufacturer, producer or importer thereof "*to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2)*" (i. e. complete automobile trucks, automobile wagons, other automobiles and motor cycles). By making the tax under this subdivision applicable only to *sales to persons other than manufacturers* liable for the taxes imposed under subdivisions (1) and (2), specific exemption was provided for sales made *to such manufacturers*. The clear intent and purpose of this exemption of sales to such manufacturers and producers is to avoid a double tax on any portion of the complete vehicles which are specifically taxed as such under subdivisions (1) and (2).

The reason for providing this exemption of sales of parts and accessories to manufacturers of the complete vehicles, as well as the reason for the use of the word "producer," was the well-recognised fact that many automobiles were an entirely assembled product, and that the "producers" thereof actually manufactured nothing. The bodies, engines, radiators, axles, wheels, rims, tires, springs, fenders, etc., from which the complete cars were assembled by such producers were all made by different manufacturers of the respective articles, and the purpose of the Act was to levy a tax on the producer's sale of the complete vehicle, and then, if replacement of any of the component parts, or of the accessories, became necessary, to levy a tax on the sale of such *replacements* or extra equipment, by the manufacturers thereof. The fact that the word "importer" was omitted from subdivision (3) is significant on this point, as showing that there was no intent to exempt sales of parts or accessories when made to the importer of cars completely manufactured in a foreign country.

After providing exemption for articles enumerated in sub-

division (3), when sold to manufacturers or producers of complete vehicles, because of the fact that the tax levied by Section 900 applied to sales made only by the *actual manufacturer, producer* or *importer*, it was necessary, in order to insure collection of tax on any parts or accessories purchased by the producer of the complete car under this exemption, and sold as extra equipment (rather than as component parts of the complete vehicle) to make the terms "automobile trucks," "automobile wagons," "other automobiles" and "motor cycles" inclusive of this extra equipment, and this was done by inserting, parenthetically, in subdivisions (1) and (2), the words "(including tires, inner tubes, parts, and accessories therefor, *sold thereon or in connection therewith or with the sale thereof*)."

Since the situation with regard to the manufacture or production of tires, inner tubes, parts, and accessories is entirely different from that existing with respect to the production of complete automobiles, there was no reason to provide for exemption of sales of "parts" for the articles enumerated in subdivision (3), to manufacturers or producers. The articles enumerated in subdivision (3) are not, as a general rule, produced by the assembling of "parts" for the same purchased from various manufacturers. Each tire, inner tube, part, or accessory, is wholly manufactured and sold in the finished state by the manufacturer thereof, and there could be no danger of a double tax having been paid on any portion of the same when sold by him.

It must follow, therefore, that if manufacturers of tires, inner tubes, parts, or accessories purchased no "parts" for use in the manufacture of their products, there could be no danger of a double tax being paid on their sales of such products, and that, consequently, *there was no necessity for providing exemption for sales of parts for the same;* and that the word "parts" used in subdivision (3) must, accordingly, mean *only parts for the complete vehicles enumerated in subdivisions (1) and (2)*, and not parts for any of the extra equipment parenthetically mentioned in these subdivisions.

If it is held that the term "any of the articles enumerated

in subdivision (1) or (2)" means not only the complete vehicles specified, but also the articles parenthetically mentioned, then it must necessarily be held, also, that any manufacturer of tires, inner tubes, parts, or accessories was entitled to exemption on all sales of his product made to any other manufacturer of tires, inner tubes, parts, or accessories. Such a construction of the statute would open the door for serious evasions of tax. Under such a construction, a manufacturer of tires, for instance, would be legally entitled to sell his entire product, *tax free*, to a manufacturer of bumpers, and since the tax is collectible only from the *actual* manufacturer or producer, and since there is no provision in subdivision (3) requiring a manufacturer of bumpers to pay tax on sales of his product (including tires, inner tubes, parts, or accessories sold in connection with the sale thereof), such manufacturer of bumpers could resell the tires purchased by him from the tire manufacturer under the statutory exemption, without incurring liability under the statute for any tax other than that due on sales of products actually manufactured by him.

Speedometers are not *enumerated* in subdivision (1) or (2), and neither are they "parts" for articles enumerated in those subdivisions. They are "accessories" enumerated or included in subdivision (3), and are so defined in the Departmental Regulations. As hereinbefore stated, petitioner makes no contention that a complete speedometer assembly was not properly taxable under subdivision (3), when so sold; and under subdivision (1) or (2), as the case might be, when sold "on or in connection with" a complete automobile truck, automobile wagon, other automobile, or motor cycle. The tax involved in this suit, however, was not levied on complete speedometers, sold separately, or otherwise, but on sales of *replacement parts for speedometers*. Petitioner manufactured no complete speedometers, but only certain replacement parts for the same, and while it is admitted that these parts were especially designed and intended for use as replacements on automobile speedometers, petitioner submits that since they were not "parts for articles enumerated in subdivision (1) or (2)," but parts for an "accessory" enumerated in subdivision (3), they were not taxable under the statutes.

The parenthetical mention of tires, inner tubes, parts, and accessories in subdivisions (1) and (2) manifestly was intended for the sole purpose of fixing the rate of tax which should be paid on such parts and accessories when sold as a part of or as extra equipment in connection with the sale of the vehicles enumerated in those subdivisions, namely, automobile trucks, automobile wagons, other automobiles and motor cycles. If such parts or accessories were sold with either of the two first named vehicles, the rate of tax was 3 per centum; while if sold with either of the two last named vehicles, the rate was 5 per centum. That, it is submitted, was the plain intent and sole purpose of the Congress. Certainly the parenthetical mention in subdivisions (1) and (2) of tires, inner tubes, parts, and accessories did not mean and was not intended as an "enumeration" of these articles, for the purposes of subdivision (3).

To say that the parenthetical mention of parts and accessories in subdivision (2) constitutes an enumeration thereof for the purposes of subdivision (3) is just exactly as reasonable as to say that the mention of the word "tractors" in the same subdivision constitutes an enumeration of such vehicles for the purposes of subdivision (3), and that consequently, parts and accessories for tractors were taxed by subdivision (3), even though tractors were specifically exempted from the tax imposed by subdivision (2). Petitioner does not believe that this Court would subscribe to such a construction of the statutes here involved, but such would be the result or effect of consistent application of the Department's holding that subdivision (3) of Sections 900 of the Revenue Acts of 1918 and 1921, and subdivision (3) of Section 600 of the Revenue Act of 1924, imposed a tax on parts for articles parenthetically included or in any way mentioned in subdivisions (1) and (2) of those sections.

Treasury Department Regulations No. 47, Article 15 (R. 5) defines a "part" *for the vehicles enumerated* as "any article designed for the special purpose of being used *as or to replace a component part* of any such vehicle * * *." Article 16 (R. 5) defines an "accessory" for the vehicles enumerated as "any

article designed *to be attached to or used in connection with* such vehicle * * *." The same article of the Regulations also specifically mentions speedometers among examples of "accessories." These definitions in the Departmental Regulations show not only that the Department made a clear distinction between "parts" and "accessories," but also that it was defining "parts" for the *vehicles* and "accessories" for the *vehicles*, and not parts or accessories for any of the other articles mentioned in subdivisions (1) and (2).

The Court of Claims held, in the case of the *Auburn Rubber Co.* v. *The United States* (H–433), decided February 4, 1929, that blow-out patches and reliners for tires were not taxable as parts or accessories for articles enumerated in subdivision (1) or (2). Obviously, the only theory on which this decision can be based is that the products involved are not accessories for articles enumerated in subdivision (1) or (2), *but are accessories for tires, enumerated in subdivision* (3). Petitioner submits that if "accessories" for articles enumerated in subdivision (3) are not subject to the tax imposed by that subdivision, then it necessarily follows that "parts" for articles enumerated in subdivision (3) are nontaxable for the same reason.

The decision of the Court of Claims states that an automobile would not be complete without a speedometer. It is submitted that even if this were literally true, it would not materially affect petitioner's contention. Exactly the same thing may be said of horns, stop lights, tires, inner tubes, etc. An automobile not only would not be complete without tires and inner tubes, but it could not be operated without them. Notwithstanding this, however, the fact remains that they are articles enumerated in subdivision (3), and, as stated by the Court in the *Atwater Kent Mfg. Co.* case, *supra*, the test is not what they become after being attached to something else, but what they are at the time of sale by the manufacturer. All of these articles are unquestionably designed for the purpose of being attached to automobiles, but at the time of sale by the manufacturers thereof, they are articles enumerated in subdivision (3), and the statutes imposed no tax on parts or

accessories for articles enumerated in that subdivision. (*Auburn Rubber Co.* v. *United States* and *National Rubber Filler Co.* v. *United States, supra.*)

In the case of the *National Rubber Filler Co.* v. *The United States*, 63 C. Cls. 337, the product involved was neither a part nor an accessory for any of the vehicles enumerated in subdivision (1) or (2). It was an accessory for a tire, enumerated in subdivision (3), and the Court of Claims held that it was not within the power of the Commissioner of Internal Revenue to extend the provisions of the taxing statute so as to bring such a product within its scope. In discussing the question of whether the words "parts" and "accessories" used in the taxing statutes could be properly construed to include the rubber filler involved, the Court said:

> "Beyond doubt the articles enumerated specifically in subdivision (3) of Section 900 have no common meaning. Otherwise it would have been unnecessary to specify. In similar revenue legislation the same course has been pursued by Congress, and articles subjected to taxation carefully enumerated specifically. Reference to an article by its fixed trade name was obviously not intended to reach another not so known or even so designated by the trade to which it is inseparably connected. * * * Surely not every article used in connection with a motor vehicle was intended to be taxed by the statute here involved. * * * Congress did not mention it in the statutes, and the doubt as to inclusion therein is made evident by the course of this proceeding."

IN CASE OF DOUBT, TAXING STATUTES ARE TO BE STRICTLY CONSTRUED AGAINST THE GOVERNMENT.

In the case of *Gould* v. *Gould*, 245 U. S. 151, cited by the Court of Claims in the *National Rubber Filler Co.* case, *supra*, the Supreme Court said:

> "In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are

construed most strongly against the Government, and in favor of the citizen."

And in *United States* v. *Merriam*, 263 U. S. 179, also cited by the Court of Claims in the *National Rubber Filler Co.* case, the Court said:

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer."

In the case of *Atwater Kent Mfg. Co.* v. *United States*, 62 C. Cls. 419, the Chief Justice said in delivering the opinion of the Court (p. 425):

> "The context shows that the word 'parts' referred to in the acts should be given a restrictive meaning."

Again citing the *Martin Rocking Fifth Wheel Co.* case, we find that on this subject the Court said:

> "And we must be mindful of the primary rule that only those things can be taxed which are by the law specifically made the subject of the tax or at least are within the plain import of the language used. The right of the Commissioner of Internal Revenue to levy a tax is a right which must be affirmatively derived from the taxing act."

CONCLUSION.

Petitioner's speedometer replacement parts, like the products involved in the *Martin Rocking Fifth Wheel Co.* case, and the *Auburn Rubber Co.* case, *supra*, are not parts for articles enumerated in subdivision (1) or (2) of Sections 900 of the Revenue Acts of 1918 and 1921, or subdivision (1) or (2) of Section 600 of the Revenue Act of 1924, and were not, there-

fore, taxable under subdivision (3) of such sections. The taxes imposed under subdivision (3) were applicable only to sales of parts or accessories for articles enumerated in subdivisions (1) and (2), and not to parts of or accessories for articles enumerated in subdivision (3).

It is submitted that the decisions held by the Court of Claims to be controlling in the case were not in point, and that the decisions cited by petitioner herein are exactly in point; that the principle laid down in these cases should be applied in the present case, and that petitioner should recover the taxes paid by it on sales of speedometer replacement parts, with interest.

Respectfully submitted,

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